No. 12175

In the United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

N RE J. ROBERT PATTERSON,
Appellant

APPELLANT'S OPENING BRIEF

Appeal from the Judgment of the United States District Court for the District of Oregon

HON. JAMES ALGER FEE,
HON. CLAUDE MCCOLLOCH,
Judges.

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DEMPSEY, KIMSEY & DOWNS

SUBJECT INDEX

TABLE OF CASES

TABLE OF CASES (Continued)

STATUTES

OTHER AUTHORITIES

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JURISDICTIONAL STATEMENT

This proceeding was instituted by the Standing Committee on Discipline to the District Court of the United States for the District of Oregon. The complaint alleged certain allegations of alleged wrongful and unprofessional conduct committed by the appellant and prayed for appropriate action by the District Court including disbarment from the United States District Court for the District of Oregon if the District Court felt the same was appropriate (R. P 2). A judgment of disbarment from practice in the District Court of

the United States for the District of Oregon was entered against the appellant by the District Court (R. P 30). The District Court has jurisdiction to discipline its attorneys, where it has power to admit attorneys to practice, including the power of disbarment. *Bradley vs. Fisher,* 13 Wall 335, 20 L. Ed. 646, 80 U. S. 335.

The Circuit Court of Appeals has Jurisdiction to review the District Court's Judgment by reason of the following statutes: Sect. 225 (a) U.S.C.A. Tit. 28—Judicial Code and Judiciary.

> "The Circuit Court of Appeals shall have appellate jurisdiction to review by appeal or writ of error final decisions:
> "First—In the District Courts in all cases save where a direct review of the decision may be had in the Supreme Court under Section 345 of this title."

STATEMENT OF THE CASE

J. Robert Patterson was admitted to practice law before the Courts of Oregon in September 1941 (R. P 77). In October 1944, after serving in the Maritime Service during the war, he became associated with Milton R. Klepper in Portland, Oregon (R. P 78). At this time he was 27 years of age. Mr. Klepper had practiced in Portland for some thirty years after graduating from Columbia University in New York (R. P 97, 98). Patterson was born in Oregon and attended Pacific University and University of Oregon for two years. He then obtained employment with the First National

Bank of Portland and finished his law education at Northwestern College of Law, a night school, working during the day (R. P 78). His father was a brick mason. On May 21, 1945, having had only a few months actual experience in the practice of law, the appellant accepted employment as an Assistant United States Attorney for the District of Oregon (R. P 80). On July 2, 1945, he was admitted to practice before the United States District Court for the District of Oregon. After becoming Assistant United States Attorney he retained his office with Klepper and was privileged to engage in private practice (R. P 22).

Prior to accepting employment with the United States Attorney's office the appellant was paid $50.00 a week by Klepper. Mr. Klepper also paid all overhead and received one half of fees from Patterson's private practice. After accepting his position as Assistant United States Attorney the arrangement was continued as before, with the exception, that Patterson did not receive any compensation from Klepper (R. P 135). Commencing October 2, 1946, the appellant, Klepper and Mr. McDannell Brown began doing business under the assumed name of Klepper, Brown and Patterson (R. P 96). No written or oral agreement was entered into whereby the parties received a definite division of income, nor did the parties share expenses in any exact ratio. An assumed name certificate was filed at this time and all business was subsequently conducted under

the firm name. On January 1, 1948, a definite partnership agreement was entered into between appellant and Klepper. On April 23, 1948, due to a heart attack, Mr. Klepper died. The dates as set forth are important because of the relationships that existed between Klepper and Patterson on the different occasions.

The facts surrounding the first act of alleged misconduct are as follows: The appellant was consulted by one Marvin L. Hughes, in connection with an injury he had received while a *passenger* on a vessel operated by the Alaska Steamship Co. and owned by the United States of America. On October 8, 1945, the appellant and Klepper filed a complaint in the District Court of the United States for the District of Oregon against the Alaska Steamship Co. The Defendant Alaska Steamship Co. filed an answer and as a separate defense set out that they were only agents of the United States and were therefore not liable. Patterson and Klepper tried the action without a jury before Hon. Claude McColloch and a judgment was entered in behalf of the Defendant. No appeal was taken from the judgment. No specific basis for the decision in the Defendant's favor was given by the Court (Exhibit 2). Hughes was advised by Patterson that in the event he desired to prosecute his claim further and specifically against the United States under the Suits in Admiralty Act, it would be necessary to seek other counsel and of the time within which this could be done (R. P 126, 127).

The facts surrounding the Second Charge of unprofessional conduct are: The Appellant had acted as counsel for one, J. Westley Bowden, for about two years and acted as counsel for him in an action brought by his wife against him for divorce (R. P 85). While the divorce action was pending, Bowden's wife was killed by an explosion of dynamite and Bowden was charged with murder in the 1st degree by the State of Oregon. It was contended Bowden set a trap for his wife (R. P 132). Patterson acted as counsel for Bowden but secured the service of Edwin D. Hicks, who was employed as chief counsel. Patterson took no active part in the trial with the exception of the cross examination of one minor witness. He did sit at the counsel table throughout most of the trial. He took leave of absence from the office of United States Attorney while he was away from the office (R. P 87, 111). The United States Attorney, Mr. Henry Hess, had knowledge of the Bowden trial and Patterson's participation therein (R. P 128-130, 139-140, 142). The State's Attorney's office also had knowledge of Patterson's position as Assistant United States Attorney and made no objection (R. P 110). The Attorney General was subsequently informed fully regarding the matter (R. P 142). Patterson did accept a portion of the fee paid by Bowden for his defense (R. P 89).

The facts surrounding the third charge against Patterson are: Joseph Martin was referred to Patterson

by the United States Probation Officer in connection with Martin's desire to procure the release of certain funds deposited in the registry of the United States District Court at San Francisco (R. P 89-91). Martin had been charged with desertion from his ship during the war emergency and his wages earned as a Merchant Seaman pursuant to *46 U.S.C.A. Shipping Sec. 701, 706* had been paid over to the Clerk of the Court. Martin was also on parole for committing the crime of armed robbery while at Melbourne, Australia (R. P 65). It had been the practice in Oregon to represent such seamen in the Oregon Court in their effort to obtain the release of such funds (R. P 92). Such practice has now ceased because it has been learned the United States is an adverse party; *46 U.S.C.A. Shipping Sec. 706, 628* (R. P 150-151). Martin was advised of the method under which he might procure the release of his funds towit: Secure the services of the United States Attorney or other private counsel in San Francisco. When Martin insisted he was not satisfied to accept said advice, Patterson advised Martin of the fact that he was engaged in private practice and advised Martin that he might consult with him at his private office, if he did not secure satisfaction elsewhere. Upon request Patterson advised Martin what he estimated a private attorney would charge Martin for performing such a service Martin left and never contacted Patterson again either privately or through the United States Attorney's office (R. P 89-91).

The facts surrounding the fourth charge of misconduct against the appellant are: The Federal Grand Jury had indicted one Eugene Russell Costello, for violation of the Federal Narcotic laws, towit: forgery of two narcotic prescriptions (Exhibits 3, 4). Patterson had presented the case to the Grand Jury in behalf of the Government. Costello's aunt called on Patterson and indicated that while her nephew desired to plead guilty it might be well to have an attorney make a statement in his behalf. Upon urging, Patterson gave the aunt the names of three attorneys, one of which was Milton Klepper (R. P 135). This entire proceeding took place while Patterson shared office space with Klepper but before any partnership or quasi-partnership was existing between them. Patterson did not participate in this fee or in any other fees collected by Klepper during this period of time. Klepper then made a statement in behalf of Costello upon his entry of a plea of guilty. Patterson related in full the details of Costello's offense and made no recommendation of punishment. The matter was referred to the United States Probationary Officer and upon his report Costello was given a suspended sentence and placed on probation. These proceedings took place before the Hon. Claude McColloch (Exhibits 3, 4).

The fifth charge of unprofessional conduct against the appellant comprises the following facts: On October 2, 1946 the Appellant, McDannell Brown, and Milton R. Klepper filed an assumed name certificate of Klep-

per, Brown and Patterson. Business was subsequently conducted under the partnership name. Stationery, the doors of their offices, pleadings, professional cards and all other legal documents indicated that the parties were partners. The parties appeared for each other and in conjunction with each other in matters of litigation. No written or oral partnership agreement existed for the division of profits, losses or a division of duties. On January 1, 1948 a regular partnership agreement was entered into between Klepper and Patterson and business was subsequently conducted under that name (R. 96, 99, 100, 103).

The Standing Committee on Discipline has made a recommendation that the appellant be permanently disbarred and that his name be striken from the roll of attorneys entitled to practice before the District Court of the United States for the District of Oregon (R. P 18).

This appeal is from a judgment entered by the court so disbarring the appellant.

The foregoing is a concise statement of the facts surrounding the alleged acts of unethical and unprofessional conduct charged against Mr. Patterson.

ERRORS RELIED UPON

THE DISTRICT COURT ERRED IN ENTERING ITS FINDINGS AND JUDGMENT OF DISBARMENT FROM PRACTICE BEFORE THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON AGAINST APPELLANT BECAUSE THE EVIDENCE IS INSUFFICIENT TO JUSTIFY SUCH JUDGMENT AND FINDINGS.

A. First Proposition: What are the particular acts constituting an offense or misconduct which would justify disbarment, suspension or other disciplinary action?

POINTS AND AUTHORITIES

1. In order to jusify disbarment the infraction or duty must involve moral turpitude and evince a depraved character that renders such person untrustworthy and a reflection upon the bar and the court as one of its officers.

Bartos vs. U.S., 19 F. (2d) 722, 727
Bradley vs. Fisher, 13 Wall 335, 80 U.S. 335, 20 L. Ed. 646
Ex parte Burr, 9 Wheat, 529, 20 U.S. 529, 6 L. Ed. 152
Ex parte Eastham, 46 Oreg. 475, 477, 80 Pac. 1057
In re Riley, 75 Okla. 192, 183 Pac. 728
In re Wilmarth, 42 S.D. 76, 172 N.W. 921
People vs. Baker, 311 Ill. 66, 142 N. E. 554
People vs. Hanson, 316 Ill. 502, 147 N.E. 431
State vs. Cutlip, 83 Okla. 183, 202 Pac. 782
Thornton-Attorneys at Law Vol. 2 P. 1187

2. It must be shown that the attorney acted in bad faith.

In re Baum, 32 Ida. 676. 186 Pac. 927
In re Becker, 187 N.Y.S. 400, 196 Ap. Div. 914
In re Collins, 147 Cal. 8, 81 Pac. 220
In re Johnson, 27 S. D. 386, 131 N. W. 453
In re Smith, 365 Ill. 11, 5 N.E. (2d) 227
In re Williams, Mo. 1938, 113 S. W. (2d) 353
5 Am. Jur. 425
6 *C.J. 590-591*
157 A.L.R. 607, 612
Thornton, Attorneys at Law, Vol. 2, P 1189

3. The evidence must be clear and free from doubt.

In re Baum, 32 Ida. 676, 186 Pac. 927
In re Hadwiger, Okla. 1933, 27 Pac. (2d) 604, 610
In re McDonald, 204 Minn. 61, 282 N.W. 677
In re Mitgang, 385 Ill. 311, 52 N.E. (2d) 807
In re Shinin, 27 S.D. 232, 130 N.W. 761
In re Williams, Mo. 1938, 113 S.W. (2d) 353
Zachary vs. State, 53 Fla. 94, 43 So. 925
40 L.R.A. (N.S.) 801

ARGUMENT

The question first to be considered is what particular acts constitute an offense or misconduct which would justify disbarment, suspension or other punishment. *Thornton, Attorneys at Law,* Vol. 2, p. 1187, states:

> "The nearest approach to a precise definition which will cover the entire subject may be stated thus: An attorney is guilty of misconduct whenever he so acts as to be unworthy of the trust and confidence involved in his official oath, and is found to be wanting in that honesty and integrity which must characterize members of the bar in the performance of their professional duties. The misconduct, however, must be wilful."

The law does not demand that every technical infraction of the law by an attorney shall require his disbarment, although, it is admitted that an attorney should endeavor to observe literally the law, but it is these infractions of duty involving moral turpitude and evincing a depraved character that renders such attorney untrustworthy and a reflection upon the bar and the court as an officer thereof that demands his disbarment. *In Re Riley, supra, State vs. Cutlip, supra.*

The Oregon Supreme Court has set forth the rule that in order to disbar an attorney from further practice, his conduct must have been such as to evidence his unfitness for that confidence and trust which attend the relation of attorney and client and the practice of law before the courts, or it should show such lack of personal

honesty or of good moral character as to render him unworthy of public confidence. *Ex parte Eastham, supra.*

Justice Field in the case of *Bradley vs. Fisher, supra,* set forth the rule that has been for many years followed and approved by other courts. He said:

> "This power of removal from the bar is possessed by all courts which have authority to admit attorneys to practice. It is a power which should only be exercised for the most weighty reasons such as would render the continuance of the attorney in practice incompatible with a proper respect of the court for itself or a proper regard for the integrity of the profession. * * * Admission as an attorney is not obtained without years of labor and study. The office which the party thus acquires is one of value and often becomes the source of great honor and emolument to its possessor. To most persons who enter the profession it is the means of support to themselves and their families. To deprive one of an office of this character would often be to decree poverty to himself and destitution to his family."

See to the same effect *Ex parte Burr, People vs. Hanson, People vs. Baker, In re Wilmarth, Bartos vs. U.S., all supra, Thornton, Attorneys at Law,* Vol. 2, p. 1187:

Where it appears that the accused acted in good faith without improper or corrupt motives and it is shown that no injury resulted to his client, cause for disbarment does not exist.

In re Collins, supra
In re Johnson, supra
In re Baum, supra
6 C.J. 590-591

Again, it appears in *In Re Williams,* Mo. 1938, 115 S.W. (2d) 353:

> "Professional misconduct as applied to a lawyer may be defined as the wilful and intentional commission of or omission to do or perform an act in connection with the practice of his profession and it must be such an act as constitutes a breach of duty to his client, the court, the public or fellow members of the profession. It must be something more than mere failure to live up to the ethics of a bar association. It must be a violation of private right or public good or it must possess an element of immorality or dishonesty." Citing with approval *5 Am. Jur. 425.*

Moreover, the proof must not only show the acts of misconduct but must clearly show that they were intended to defraud or deceive. The mere failure of an attorney to exercise good judgment in a transaction with his client due to his *inexperience* where no motive or intent to cheat or defraud is shown does not constitute ground for disbarment. *In re Smith,* supra. Moreover, when the acts complained of did not result in a loss to any of the parties interested and were done without any intent to injure anyone, suspension will not be warranted. *In re Becker,* supra, 157 A.L.R. 697, 712.

Thornton, Attorneys at Law, Vol. 2, P. 1189, states that:

> "there seems to be no instance of an attorney having been removed because of his ignorance of the law unless such ignorance has been made manifest by some well defined misconduct which in itself is a ground for disbarment. In that case, of course, it may be assumed that ignorance will be no defense."

It may be stated to be a well settled rule in disbarment proceedings that charges of official misconduct must be established by clear and undoubted preponderance of the evidence.

In re Shinin, supra
In re Baum, supra

Moreover, in order to warrant disbarment or suspension, the record must be free from doubt not only as to the act charged but also as to the motive with which it is done. A lawyer will not be subjected to discipline merely upon suspicious circumstances. The following cases state the rule that the court should proceed cautiously in depriving a lawyer of his professional license and the charges must be supported by convincing proof. See *In re Mitgang,* supra, *In re Hadwiger,* supra, *Zachary vs. State, supra.* The proof of the wrong-doing must also be cogent and compelling. *In re McDonald,* supra, *In re Williams,* supra.

With these well established principles in mind we will now turn to the discussion of each charge of alleged misconduct in order to see if the appellant's conduct justified disbarment.

B. Second Proposition: The evidence does not support a finding that the appellant was guilty of unprofessional conduct with reference to his actions in connection with the case of Marvin L. Hughes vs. Alaska Steamship Company.

POINTS AND AUTHORITIES

1. The Respondent acted in good faith.

2. Attorneys for private insurance companies defended such cases and not the United States Attorney's office.

3. No suggestion of impropriety was called to appellant's attention although the case was tried before a regular judge of United States District Court for the District of Oregon.

4. It has since been decided that a person in the position of Hughes does not have an enforceable claim against anyone.

John H. Arnestal vs. U. S. of Am. & Alaska S. S. Co. 1946 A.M.C. 1364
In re Baum, 32 Ida. 676, 186 Pac. 927
Calderola vs. Eckert, 91 L. Ed. 1968, 67 S. Ct. 1569, 332 U.S. 155

In re Collins, 147 Cal. 8, 81 Pac. 220, 223
Hust vs. Moore-McCormack Lines, Inc., 90 L. Ed. 1534, 66 S. Ct. 1218, 328 U.S. 707
Thornton, Attorneys at Law, Vol. 2, P. 1213

ARGUMENT

The first allegation of the appellant's misconduct refers to the fact that he filed a complaint in this court on behalf of Marvin L. Hughes, plaintiff, vs. Alaska Steamship Company, a corporation, defendant, and thereafter prosecuted said cause to a conclusion although he well knew one of the principal defenses that would be urged by the defendant was that the plaintiff's claim, if any, should be asserted against the United States of America, whom he was not in a position to sue because of his office as Assistant United States Attorney (R. P 3). It is alleged that the appellant was guilty of misconduct in this regard for the reason that he represented conflicting interests. It has many times been stated that it is improper for an attorney to represent two parties in an action where it is his duty on behalf of one party to contend for that, which on the behalf of the other, it is his duty to oppose. The evidence disclosed that the appellant as Assistant United States Attorney did not appear in behalf of the United States of America in cases brought pursuant to the Suits in Admiralty

Act and that they were defended by private lawyers representing the insurance carriers (R. P. 84). Can it seriously be contended that the appellant fraudulently and intentionally violated his oath of office or other rules of professional conduct in such a manner as would shock the conscience of the court or other members of the profession when he represented a party against another private litigant?

In the case of *Hust vs. Moore-McCormack Lines Inc.,* supra, it was urged by the defendant that if the plaintiff had any cause of action, it was against the United States of America under the Suits in Admiralty Act. In this case a *seaman* sued the general agent for injuries which he received on a vessel operated by the general agent but owned by the War Shipping Administration. The provisions of the general agency contract were considered in that case and it was decided by the U.S. Supreme Court that the general agent was responsible for the operation of the vessel. The general agency contract provided that the general agent should "manage and conduct the business of the vessel, maintain the vessel in an efficient state of repair and to exercise reasonable diligence in making inspections for that purpose." In the Hughes case instituted by Patterson, the action was based on the failure of the agent to make repair or to make inspection of a bunk bed which collapsed while the plaintiff was lying on it, causing him serious personal injuries. It is urged that the appellant acted as a

reasonable person in bringing the action against the general agent. Surely it cannot be contended that he intentionally brought the suit in bad faith and did not have reasonable grounds upon which to rely when he instituted such suit.

In order to entail the consequences of representing conflicting interests it should appear that there were antagonistic interests in fact and which the attorney assumed to represent, and it should further appear that in assuming this relation to both sides of a controversy the attorney was acting from a corrupt motive or with evil intent and that by reason of such conduct some injury or wrong was sustained by the parties interested. An attorney might appear upon the record as representing all of the parties in a suit with their consent and no exception could be taken to it as against the attorney. *In re Collins,* supra.

It appeared that Hughes, the plaintiff, whom the appellant represented, was a *passenger* on a War Shipping Administration ship operated by the defendant, Alaska Steamship Company, and was returning from Alaska to the United States as a *passenger (R. P 23).*

In *Hust vs. Moore-McCormack,* supra, Justices Douglas and Black in a special concurring opinion held that the Alaska Steamship Co. would be responsible under the *pro hac vice* rule. True, in *Calderola vs. Eckert,* supra, the majority opinion (five concurring) held

that the *pro hac vice* rule did not apply. But Justices Douglas, Rutledge, Black and Murphy reaffirmed the rule. Surely a man cannot be guilty of misconduct warranting disciplinary action when misconduct arises solely as a question of law and when at least four judges of the Supreme Court of the United States concur in the theory adopted by the accused.

It has since been held that under an identical situation the passenger seeking recovery of damages for personal injuries alleged to be due to the defective condition of the vessel is barred from recovery as against both the United States and the private operator on his right of recovery in tort. The court, however, in this case, under its own opinion, stated that he was somewhat in doubt as to his conclusion. *John H. Arnestal vs. United States of America, and Alaska Steamship Co.,* 1946 A.M.C. 1364. Therefore by judicial decision it has now been made clear that there was no conflict in interests because Hughes had no claim against the United States. Moreover, *Thornton, Attorneys at Law,* Vol. 2, p. 1213, lays down the rule thus:

> "But the acceptance of a retainer from persons whose interests are adverse to those of the client under a mistake of fact will not justify disbarment, nor is the attorney guilty of unprofessional conduct for failing to disclose to his client all of his connections with antagonistic interests especially where the client has been informed of the essentials and the attorney has reason to believe that the client is familiar with the facts." (See also *In re Baum,* supra.)

Surely, under the circumstances and evidence as disclosed in this regard the appellant cannot be said to have intentionally and with a corrupt motive represented the plaintiff Hughes in the action against the Alaska Steamship Company.

C. Third Proposition: The evidence does not support a finding that the appellant was guilty of unprofessional conduct with reference to his actions in appearing in behalf of the defendant in the case of the State of Oregon vs. J. Westley Bowden.

POINTS AND AUTHORITIES

1. The appellant served only in a nominal capacity.

2. The appellant acted in good faith and only after full disclosure of facts to everyone.

3. No suggestion of impropriety was called to the appellant's attention.

4. Appellant never was a witness in behalf of Bowden and it was only a bare possibility that he might be called to testify briefly on a collateral matter.

Hunter vs. Troup, 315 Ill. 293, 146 N.E. 321
In re Becker, 203 N.Y.S. 437, 208 App. Div. 224
In re Holden, 110 Vt. 276, 4 At. (2d) 882
In re Mitgang, 385 Ill. 311, 52 N.E. (2d) 807
In re Wakefield, 107 Vt. 180, 177 At. 319

ARGUMENT

The second charge of misconduct against the appellant is that he accepted employment by one, Westley Bowden, who was charged in the Circuit Court of the State of Oregon for Multnomah County with the crime of murder, and that he represented the said Westley Bowden at the trial and accepted a fee therefor although he expected to be called as a witness in the trial of the said Bowden and although the Attorney General's Manual covering the conduct of United States Attorneys directs that the United States Attorneys *shall not* represent a person charged with a crime in a state court (R. P 3).

Attention is directed to the Attorney General's Manual, which, rather than in the language of a direction or order, states that United States Attorneys and their assistants *should* not represent a person charged with a crime in a state court (R. P 9, 159). This is in the interest of cooperation between the two prosecuting agencies and for other obvious reasons. However, the evidence disclosed that the appellant took a very nominal part in the defense of Bowden and secured the services of another competent attorney who was in charge of Bowden's defense. The evidence further disclosed that the respondent was at no time familiar with the provisions of the Attorney General's Manual nor were these provisions called to his attention (R. P 88, 89, 128, 140, 141, 142). The evidence showed that all of the proceed-

ings were open and that the appellant did not attempt to cover up or hide the fact that he represented Bowden (R. P 120, 130). We submit that the conduct of Assistant U.S. Attorneys as laid down by the Attorney General's Manual is at most an interdepartmental ruling and does not involve a question of ethics.

One of the questions involved in this charge is whether or not the respondent represented conflicting interests. In other words, if it was his duty to prosecute the defendant for the offense committed then it can be said that it would be improper for him to attempt to defend the same person. Duties of the respondent as Assistant United States Attorney concerned both civil and criminal cases but did not include crimes committed against the State of Oregon unless at the same time they were also crimes against the United States. It has been shown by the evidence that the District Attorney of Multnomah County was fully informed as to the position taken by the appellant in behalf of Bowden and that no attempt was made by the appellant to use his position to an advantage nor was it disclosed to the jury during the trial or at any time (R. P 114).

It is further alleged that the appellant was guilty of misconduct in this same regard for the reason that he expected to be called as a witness at the trial. The canons of the American Bar Association on professional ethics and grievances set forth that an attorney cannot properly accept employment in connection with a case

if he *knows* that he will be an essential witness. While the canons of ethics do not have the effect of a statute, nevertheless they constitute a safe guide for professional conduct and the court may punish an attorney for his failure to observe the same. *Hunter vs. Troup,* supra, *In re Mitgang,* supra. However, the evidence in this case disclosed that there was no certainty that the appellant would be called as a witness and that even if he were, the testimony that he would have given would have been as to rather minor and collateral matters. It further appears that in fact the appellant never was called as a witness nor did he take the stand at any time during the entire proceedings (R. P 111, 124). In the case of *In re Obartuch,* 386 Ill. 323, 54 N.E. (2d) 470, the court said that in a case where the defendant was appearing as an attorney and also testified as a witness that the practice of appearing in such a dual capacity had been condemned in many cases, but that this fact alone was not sufficient upon which to base a disciplinary action. *In re Holden,* 110 Vt. 276, 4 At. (2d) 882, was a proceeding to disbar the defendant where it appeared that he actively participated in the trial of a case as an attorney and also became a witness and testified for his client as to material and disputed matters. It was not found, however, that the defendant had any intent to deceive and the proceeding was dismissed with a reprimand.

It is not contended that the appellant used his connection with the United States Attorney's office in ob-

taining information or evidence to use in behalf of Bowden. See *In re Becker,* supra. Surely, it cannot be contended that the appellant's conduct in this regard measures up to the rule that was laid down in the following case: *In re Wakefield,* supra, where the district attorney of a county appeared before the State Liquor Control Board in behalf of a client in his private capacity. It appeared that the client had violated the state law and the attorney was informed that he would be asked to prosecute the client for violation of the criminal law. It was held that the act of the district attorney was unethical and he was suspended for three months.

It was brought out in the proceedings that the appellant failed to take administrative steps to secure the approval of the Attorney General. However, it has been shown from the evidence that all of the facts were reported to the Attorney General and that the appellant was not discharged from his office as an Assistant United States Attorney by the Attorney General (R. P 80, 1420). In view of the fact that it is charged that the respondent is guilty of misconduct of such a serious nature as to warrant suspension, then certainly a violation of the same rule promulgated by the Attorney General should be grounds for discharge from office. It is seriously and strongly urged upon the court that there is no evidence to show that the appellant wilfully and intentionally violated either the Attorney General's standard of conduct or any of the canons or rules of profes-

ional ethics. The record reveals that his superiors and associates did not even admonish him against sitting through the Bowden trial although the facts were fully known to them (R. P 128-29, 139).

Even the portion of the fee accepted by Patterson was less than that which, under the rules of the Oregon State Bar Association, he would have been entitled to receive by forwarding or referring the business to another attorney (R. P 110). Surely, his conduct was not such as to shock the conscience of the court or other members of the legal profession. It would appear that at all times his motives were good and that he, in heart at least, felt duty bound to Bowden, whom he had represented for some long period of time, to defend him in at least a nominal capacity. Appellant asserts that had the matter at any time been called to his attention, he would have taken immediate steps to correct the same.

D. Fourth Proposition: The evidence does not support a finding that the appellant was guilty of unprofessional conduct with reference to his actions in connection with Joseph Martin's efforts to procure the release of certain funds on deposit in the registry of the United States District Court at San Francisco.

POINTS AND AUTHORITIES

1. The appellant acted in good faith in his attempt to help Martin.

2. It has since been determined that the United States Attorney's office is an adverse party in such proceedings.

3. Patterson gave Martin the advice which he sought

State vs. Smith, 84 W. Va. 59, 99 S.E. 332
Thornton, Attorneys at Law, Vol. 2, P 1254, 46 U.S.C.A. Shipping Sec. 701,706.

ARGUMENT

The next charge against the appellant is that he was guilty of misconduct for the reason that he offered to represent one Joseph Martin for a fee in connection with a proceeding to procure the release of certain wages earned by the said Joseph Martin in the amount of $1,150.00, which were deposited in the registry of the United States District Court at San Francisco, California, although the said Joseph Martin was referred to him in his capacity as Assistant United States Attorney and that such matters were customarily handled by United States Attorneys without compensation therefor (R. P 3, 4).

The evidence disclosed that Martin was referred to the appellant by the United State Probation Office and that Martin had been charged as a wilful deserter from a vessel while at a port in Australia. Martin, after deserting the ship, was charged with a crime, in addition to that of desertion and was brought back to the United

States and placed on probation. The money he had earned as wages on the ship, in the meantime had been paid into the registry of the court at San Francisco. Evidence disclosed that appellant advised Martin that, in his opinion, the only way for him to seek the return of his money was to go to San Francisco and present himself at the United States Attorney's office or to secure private counsel in San Francisco. After Martin had advised the appellant that he did not wish to go to San Francisco, Patterson inquired as to whether or not Martin had an attorney in Portland, and when advised that Martin's brother had counsel in Portland, *he advised Martin to seek the advice of his brother's attorney.* It was only after Martin hesitated in taking his advice and seemed hesitant in doing as the appellant advised him that Patterson mentioned that, in the event he did not receive satisfaction, and, if he cared to do so, he could talk with the appellant in his private offices in the Yeon Building. Patterson at this juncture gave Martin one of his business cards. Martin then inquired as to the amount of attorney's fee that an attorney might charge him for this work, and the appellant advised Martin that it was impossible to estimate the attorney's fee that would be involved for it would depend upon the amount of work done, but that in all probability the fee would be approximately $175.00 (R. P 89, 92). It would appear, therefore, that at all times the appellant was interested in helping Martin and solicitous of his welfare. It appears that at all times the advice

that appellant gave Martin was good advice and noth ing was done to deceive Martin or to advise him falsel in the premises. The evidence disclosed that at all time the appellant was interested in doing what he could fo Martin and was free from any corrupt or fraudulen motives (R. P 91).

While it is not admitted by Patterson that there wa any attempt or intent to solicit employment from Mar tin, nevertheless it is interesting to point out that al soliciting of employment by an attorney will not unde all circumstances justify his disbarment or suspension In order to justify such a result, such solicitation mus be in a dishonorable or disreputable manner. Where i consists of a mere effort to procure employment in a honorable way, for legitimate purposes, it is not groun for suspension or disbarment. *State vs. Smith,* 84 W Va. 59, 99 S. E. 332.

Thornton, Attorneys at Law, Vol. 2, p. 1254, sets fortl the rule:

> "A mere effort to procure employment in a honorable way and for legitimate purposes is no a sufficient ground for disbarment and may no even be censurable."

The evidence disclosed that it had been a custom i the United States Attorney's office in Portland, Ore gon, to represent seamen gratuitously in their effort to secure wages which had theretofore been paid int the registry of the court. However, the evidence was jus

s clear that it had never been the custom or practice attempt to represent such a seaman in any district ther than Oregon, and that since this proceeding the ttorney General has instructed the United States At-rneys that they are an adverse party in such proceed-ngs and should appear in opposition to the seamen for ne reason that money declared forfeited under such ircumstances reverts to the Treasury of the United tates to form a fund for the relief of sick and disabled nd destitute seamen belonging to the United States Merchant Marine Service. *46 U.S.C.A. Shipping* Sec. 01, 706 (R. P 151-152, 154-155).

The complainant in this connection has referred to he opinion No. 211, March 15, 1941, issued by the Com-nittee on Professional Ethics and Grievances of the American Bar Association. This refers to fees and soli-itation of employment for advice and service to regis-rants under the Selective Training and Service Act of 940. At no time could Martin be considered a member f the military, naval, or marine service of the United States nor was the advice which he sought with refer-ence to any service or claim under the Selective Train-ng and Service Act. The evidence disclosed that after Martin hesitated in taking the advice given by Patter-son; the appellant gave Martin a business card and told him he would be glad to see what he could do for Martin if he was unable to obtain satisfaction elsewhere. Surely, where the appellant was of the honest opinion that he

could do nothing for Martin in his official capacity a Assistant United States Attorney and where Marti refused to heed his advice, the giving of the busines card was not such an act of misconduct as would shoc the conscience of the court or other members of the lega profession so as to justify disbarment or suspensio

The court's opinion states:

> "Patterson offered, as a private attorney, to at tempt to recover the money for a fee of $175.0((R. P 211, 212).

The facts are as disclosed by the record that Patterso never at any time accepted or offered to accept any fe from Martin. Martin was told to go to San Francisc and secure services of the United States Attorney o other private counsel. He was also advised to consul with his brother's counsel in Portland. The relation ship of attorney and client never existed.

E. Fifth Proposition: The evidence does not suppor a finding that the appellant was guilty of unprofes sional conduct with reference to his actions in connec tion with the case of the United States vs. Eugene Rus sell Costello.

POINTS AND AUTHORITIES

1. The appellant was not a partner of Milton Klepper at the time Klepper represented Costello.

2. The appellant acted in the utmost good faith and no attempt was made to deceive the court.

3. The court knew of the relationship between appellant and Klepper at the time.

In re Johnson, 27 S.D. 386, 131 N.W. 453
In re Lyons, 162 Mo. 688, 145 S.W. 844
Thornton, Attorneys at Law, Vol. 2, P. 1258

ARGUMENT

The fourth act of misconduct charged against the ppellant is that he appeared in the above-entitled court s Assistant United States Attorney and represented he United States of America against Eugene Russell ostello although he was then associated in the practice f law with Milton R. Klepper, who appeared in said roceedings representing the said Eugene Russell Costello (R. P 4).

The evidence disclosed that the appellant was associated in private practice with the said Milton R. Klepper n that he had private offices in the same suite of offices with the said Klepper, but at no time during the pendency of this Costello proceeding was Patterson in any way a partner of the said Milton R. Klepper nor did the appellant and Milton R. Klepper represent that they were partners (R. P 94-96). In fact, it is alleged in the fifth allegation of misconduct on the part of appellant that the said respondent never was at at any time, to the

present date, a partner of the said Klepper (R. P 4). In the case of *In re Lyons,* 162 Mo. 688, 145 S.W. 844, the exact situation was before the court. In that case a state statute prohibited a partner of any prosecuting or assistant prosecuting attorney from defending any person charged with a misdemeanor or felony whom by law such prosecutor or assistant prosecutor was required to prosecute. It was held that this statute applied only to state prosecuting attorneys and not to United States District Attorneys. Where no partnership existed between a Unied States Attorney and an Attorney occupying the same office and associated with him in civil business, the fact that to the knowledge of the District Attorney the other attorney was retained to defend a person accused of a crime in the United States District Court does not justify the disbarment of the district attorney. The court pointed out that had the evidence shown that they were dividing fees and were actually partners, it would have justified disbarment. The court stated:

> "A partnership between public prosecutors and another lawyer in civil business is not unlawful nor is it improper and we have not been advised of any federal statute against it. * * * It has not been thought to be necessary for them to sever such relations while in office although, of course, the partner obeys the statute as well as his own sense of propriety and does not defend in criminal cases. So therefore in order to support this charge it is necessary that the evidence should show that they were partners when Davis was defending Martin."

In view of the fact that the evidence showed that they were merely associates and not partners, the proceedings were dismissed.

In the case of *In re Johnson,* 27 S.D. 386, 131 N.W. 453, it appeared that the defendant was a state's attorney and employed one Auldridge in his private office. After investigating a criminal case, the complainant came to the defendant and asked him to represent him in a civil suit. The defendant refused to do this and suggested other attorneys and among them, Auldridge. Auldridge took the case and without any assistance of the defendant prosecuted it to conclusion. The defendant received no compensation from it. The court held that, in the absence of evidence that the proceedings were taken from improper motives or for an improper purpose, the charge against the defendant of unprofessional conduct was not sustained.

Thornton on Attorneys at Law, Vol. 2, p. 1258, cites with approval the leading case of *In re Lyons,* supra and states:

> "But the fact that the district attorney occupies the same office with another attorney and is associated with him in civil business and that such other attorney has been retained to defend persons accused of crime in the courts wherein the district attorney officiates does not justify disbarment of the latter."

It is not seriously contended by the complainants that any advantage was taken of the court or that the appel-

lant acted fraudulently or sought to mislead the court. The defendant Costello pleaded guilty and all of the facts concerning the crime were submitted to the court both through Patterson and the probation office, which made a thorough investigation of the Defendant's record and character. It is admitted that the appellant may be subject to criticism when he suggested Milton R. Klepper's name as one of three attorneys whom the defendant's aunt might seek for legal advice, but that at all times his intentions were good and that at no time did he seek to mislead the court or to act with corrupt motives. It is urged that conduct of the respondent in this regard is not ground for disbarment or suspension.

The court in its opinion states:

> "The judge asked Patterson for a recommendation and the latter replied that he had none to make, but did not suggest that the refusal was based on the fact that Costello was represented by his own associate. Upon his plea, which Patterson did not oppose, the judge granted the request." (R. P 213.)

The record discloses that only after a full investigation was the defendant Costello placed on probation. The basis for granting probation is disclosed in the transcripts of the proceedings (Ex. 3, 4) wherein the following statement of the court appears: [1]

Footnote 1 "A man of the disposition I am, in approaching the disposition of these cases, who bases his action not only on the opin-

ion of many people and who the people are makes a good deal of difference. Now this is a borderline case, I will say, and what I am going to do may not be satisfactory to everybody interested, and it may not turn out to be the right thing to do, but you have expressed your opinion. *I have known you for a long time. You are a man of standing in the profession, having had long experience. You have raised a family of your own, a lovely family.* You tell me you think one more chance given to this defendant he might stand up, and so I am going to let that be *the scale with me* and I am going to give him the chance, but I am going to do this: I am going to pass a sentence now and definitely suspend it so he will know and you will know, and everybody interested will know, what the consequences will be if he does not make the grade this time. I have in my mind the period of sentence, but I would like a suggestion from you, Mr. Cochran, as to what the period of probation would be, five years or more?''

The appellant and Klepper had appeared in the Hughes case and in other cases together before the Costello matter came before the court. As disclosed by the Exhibits No. 6, 7, 8, 9, 10, 11, 12 introduced in this case it was apparent to the court of the relationship which existed between Klepper and Patterson. Both the Hughes case and the Costello hearing were heard before the Hon. Claude McColloch. For the court to now

say they had no knowledge of such relationship is not supported by the evidence.

F. Sixth Proposition: The evidence does not support a finding that the appellant was guilty of unprofessional conduct with reference to his actions in connection with the carrying on the practice of law under the firm name of Klepper, Brown and Patterson.

POINTS AND AUTHORITIES

1. At least a quasi-partnership existed between Klepper, Brown and the appellant after they had begun doing business under the firm name.

2. No one was misled, overreached or prejudiced on account of the appellant's, Brown's or Klepper's actions.

3. Klepper and Patterson on January 1, 1948 formed a general partnership.

4. The appellant acted in good faith.

In re Gluck, 123 NYS. 857, 139 Ap. Div. 894
In re Hertz, 139 Minn. 504, 166 N.W. 397
In re Kaffenburgh, 188 N.Y. 49, 80 N.E. 570
In re Scott, 52 Nev. 78, 292 Pac. 291
40 Am. Jur. Partnerships, P. 146, 153
7 C.J.S. Attorney and Client, 838 Note 19
47 C.J. Partnership, 672
Thornton, Attorneys at Law, Vol. 2, P. 1252

ARGUMENT

It is next alleged that the appellant was guilty of sconduct in that he permitted and consented to car- ng on the practice of law under the firm name of epper, Brown & Patterson and holding himself out a partner when in fact he was not such a partner . P 4). It appears from the evidence that the appel- t began the practice of law in October of 1944, after ving served with the U. S. Maritime Service during e war years (R. P 78). Until he went into the United ates Attorney's office, which was in May of 1945, he s paid a salary by the said Milton R. Klepper and rked for him in connection with the carrying on of s legal business (R. P 95). After going into the Uni- l States Attorney's office and until October 2, 1946, e appellant maintained his private office with the id Milton R. Klepper and was associated with him in e practice of law. It appears that on the latter date e parties, having gained mutual confidence in each ner and in order to facilitate their own practice, de- led to do business under the frim name as alleged in e complaint (R. P 96). The evidence disclosed that tterson and the other partners performed legal ser- es for each other, tried cases in behalf of the others' ents, but that the said appellant had no written or her stated agreement as to the amount of compensa- n he would receive for the work performed by him for e other partners' clients (R. P 100-106). It was speci- ally understood that he was to receive half of the net

fees collected which were a result of his own privat business. Evidence disclosed that compensation wa paid to the appellant from time to time based upon th results and the work performed for the other partner (R. P 100). Assumed business names were filed in th county clerk's office of Multnomah County as require by law and the business to all intents was carried on a a partnership arrangement (R. P 103).

It is admitted that there was no understanding, either written or oral, between the partners as to the sharing of any losses which might be incurred by the firm. Cer tainly, however, as far as the individual partners were concerned, any losses suffered by the firm or profits made would result in an advantage or disadvantage, a the case might be, to each partner.

It is contended that the relationship after the firm was organized was at least that of a special partnership and that they were entitled to use the firm name and did not violate any of the canons of professional ethics nor mislead or misrepresent to the public their relation ship. See *Attorney and Client, 7 C.J.S.* 838, note 19.

What constitutes a partnership is a matter of judi cial interpretation. The views of the courts on this ques tion have undergone changes from time to time and rules formerly approved have become obsolete and new tests have been announced as a means of determining whether a particular association constitutes a partner-

ip. Doubtless there are in every partnership unmis-
kable badges of the relation but no one fact or cir-
umstance can be taken as a conclusive test, nor indeed
it possible to state any number of facts that would in
l cases be decisive of a partnership relation. In the
st analysis the facts and circumstances of the indivi-
ual cases must control. Where a person is entitled to
are the profits as such in any business enterprise, he
to be considered as a partner as to third persons, even
ough it is stipulated in the contract that he should
ot be liable as a partner. *40 Am. Jur., Partnerships.*
146, 153. Moreover it has been held that it is sufficient
constitute a partnership if the partners participate in
e profits and are liable to be affected by the losses
ven though only to a limited extent. It has also been
eld that where the parties have clearly manifested an
tention to form a partnership, the relation is not af-
ected by a provision in the agreement whereby one of
he parties undertakes to indemnify the other against
ny loss or liability incurred or arising out of the busi-
ess *47 C.J., Partnerships,* P. 672.

Surely the appellant's conduct was not such as is
rdinarily the case where an attorney is complained
gainst for using a fictitious name as a partner or using
he name of a person not authorized to practice law.
n re Scott, supra, *In re Kaffenburgh,* supra. *In re*
Gluck, supra. *Thornton, Attorneys at Law,* Vol. 2, p.
252. The evidence adduced at the hearing failed to

show that anyone had been misled, over-reached o prejudiced on account of the appellant's acts, and it i not contended by the complainant that such was th case. See *In re Hertz, supra.* It seems, therefore, tha the most that could be said, from the evidence produced is that a doubt has been raised as to the propriety or th right to the use of the firm name and whether or not a special partnership existed. The appellant asserts tha since January 1, 1948, a general partnership was formed and all doubt now removed. Surely, under these circumstances the court could not say that the respondent acted wilfully and wrongfully and with guilty knowledge o corrupt motives in the use of the firm name in th conduct of his business. His conduct was not such as would shock the conscience of the court or the other members of the legal profession.

We doubt if the public, the profession, or the courts ever knows whether attorneys, associated together as they commonly do, are working as full partners or under some other arrangement common in the practice of law. It is a common practice for younger members of a firm to share in the profits and yet not appear as a partner in the firm name.

The court might feel that the appellant is taking inconsistant positions in that in referring to the Costello matter he argues that he was not a partner but a mere associate of Milton R. Klepper and therefore not guilty of misconduct when he represented the United States

while at the same time Milton R. Klepper represented Costello; and in now arguing that there was a special partnership after the assumed name certificate was filed and that, thereby he was entitled to use the firm name in the operation of the business carried on by the partnership. The appellant admits that there was no different financial arrangements made between the individuals but calls to the court's attention that the decision to do business under the firm name, while it was concurred in by all of the partners, was a matter for the senior partner to decide (R. P 99). No doubt, Milton Klepper had been associated with the appellant for such period of time and because of the association had come to gain such confidence in the appellant, that he was willing to hold him out as a partner. Surely, as to third parties they were partners and would have been liable as such, in the discharge of their duties as attorneys.

CONCLUSION

The bar of the State of Oregon is an integrated bar and was so created by the state legislature. *Tit. 47, Attorneys, Chapter 2,* 47-201-226 O.C.L.A. 1940 Ed. Provisions have been made for the creation of local committees to investigate and conduct hearings for acts of alleged misconduct against members of the bar. 47-216-219 *O.C.L.A.* 1940 Ed. The Board of Governors may make recommendations to the Supreme Court of the State of Oregon and the Supreme Court may affirm,

modify or reverse the recommendation. 47-213 *O.C.L.A.*, 1940 *Ed.* This proceeding did not conform with the procedure as established by the Oregon State Bar Association.

Where an attorney has been disbarred by the Oregon Supreme Court, the United States District Court for the District of Oregon has provided by rule that within thirty days the disbarred attorney must show cause why he should not also be disbarred from practice in the United States District Court. See appendix P. 51..

The United States District Court for the District of Oregon has appointed its own permanent standing committee on Discipline. This committee is not in any manner connected with the Oregon State Bar. It is appointed by the Judges of the United States District Court for the District of Oregon. The membership of the committee is composed of five lawyers. One of its members took no part in these proceedings.

It is never a pleasant task for a lawyer to come in conflict with the courts. This conflict is particularly pointed under the disciplinary procedure as adopted in the District Court of the United States for the District of Oregon. In disbarment proceedings under the state law the committee is appointed by the Board of Governors. Appointment of the committee by the court, then the court to sit as "tryers of the fact", does not conform to the usual standards which obtain in all

states which have now adopted what is commonly termed "the integrated bar."

In the *Hughes vs. Alaska Steamship Co.* matter and in the *United States vs. Eugene Russell Costello* matter the entire proceedings occurred before Judge McColloch. It is not contended that the court by the slightest intimation made it known to Patterson that he felt that there was any question of propriety. That he had knowledge of Klepper and Patterson's relationship is beyond question (Ex. 6, 7, 8, 9, 10, 11, 12.)

The Court was not satisfied with its own committee's findings and directed that they be strengthened, (R. P 178, 179, 182). Later the court decided to prepare its own findings and thereupon did so. (R. P 197).

The Court's opinion was not originally made a part of the record although we designated that it should be (R. P 35, 39). The designation was filed on January 27, 1949 (R. P 35). After the appeal was taken and, towit, on March 10, 1949, the opinion was filed and transmitted by the District Court clerk to this court whereupon it was filed and made a part of the record on March 12, 1949, (R. P 218). We recognize that the opinion on its face is very damaging to the appellant. It is contended strenuously, however, that many statements made by the court are unfounded and without any support in the record. It is said by the court that four incidents prove the indictment. (R. P 210).

First: Patterson defended a person charged with murder in the state court. Our answer is that the Attorney General's regulation does not prohibit this, but merely directs that it *should not* be done. It is not contended that the Attorney General could not give his permission under certain circumstances or that he would not have done so in this instance. Apparently from the record the Attorney General thought that permission should be granted in this instance as no action was taken by the Attorney General against the appellant. (R. P 80).

Second: Patterson, while Assistant United States Attorney, represented Hughes in an action against a private corporation towit, the Alaska Steamship Co. It is said he knew that his client, the United States would be morally and in certain events legally liable to pay any judgment which might be recovered (R. P 210). This statement is not only unsupported in the record but it is clearly shown private insurance carriers defended the action (R. P 84).

Third: Patterson attempted to charge a Parolee a fee for obtaining money on deposit in the registry of the court at San Francisco. (R. P 211). It is suggested that Patterson intended by his action to prey upon this ward (R. P 212). The record discloses that Patterson gave him the advice any other Assistant United States Attorney would have given him, (R. P 152) with the exception that when the ward still seemed dissatisfied,

Patterson did advise him he would be glad to see what he could do for him if he did not secure satisfaction elsewhere. Is an attorney to be punished and disbarred for acting in good faith in trying to assist a party? Apparently the court contends that Patterson should have told Martin that he could do nothing for him and to seek advice elsewhere. It is abundantly plain, that Patterson had no responsibility or authority as an Assistant United States Attorney in the U. S. District Court in California.

Fourth: Patterson appeared for the Government in the case of *United States vs. Eugene R. Costello* while at the same time his associate, Milton R. Klepper appeared for the defendant. It is suggested that Costello was deceived into entering a plea of guilty upon the promise of a light or a suspended sentence. (R. P 215). While this is the only charge against the appellant which we believe subjects him to criticism, nevertheless, the statement of the court could not be further from the facts as disclosed by the record. Costello did not testify at the appellants hearing. It is not contended by anyone however, that Costello was deceived into entering a plea of guilty or that he had not long before the hearing made up his mind to enter a plea of guilty. His aunt merely desired an attorney to make a statement in his behalf. Although it was known to the Judge of the association of Patterson and Klepper, apparently he did not consider it too grave a matter, as nothing was said

to Patterson or to Klepper by the Court either at th time of plea or the time of sentence held one mont later. (Ex. 3, 4).

The opinion intimates that counsel for Patterson a the trial and one of the writers of this brief was at leas "over-persuaded" in accepting the defense of J. Rober Patterson. We gather the implication from the opinio that no lawyer should have accepted employment in be half of Patterson. May we say to this court we were no "over-persuaded"—we were not "prevailed upon." W accepted the employment only after due and complet deliberation and investigation as to the law and as to th facts.

The truth is that after the alleged charges of miscon duct had been fully discussed with counsel; counsel was of the opinion that they contained no merit. Counsel is even more convinced of this same fact today and feels that a rank injustice has been done against not only the appellant but the profession as a whole. This court is aware that it has taken years of experience for the aver age young lawyer to be well rounded in ethics, practice and procedure. Normally, the young lawyer has the benefit of criticism and advice, both from the Courts and from older attorneys. Counsel doubts that the record of any young lawyer would reveal fewer mis takes of judgment, and most of these cannot even be called mistakes of judgment. It is contrary to every primary principle of justice that *suspicion* should be

read into them for the purpose of imposing such a severe penalty.

Lastly, it is contended that he has failed to guard the interests of the defenseless and oppressed (R. P 217). We believe, that if anything, the record clearly demonstrates that Patterson (perhaps because of his age) was too anxious and eager to assist others and to do everything in his power to help them.

We recognize that the opinion of Judge Fee is most severe. The use of the words "traitor" (R. P 218)—"Moral Myopia" (R. P 209), are very harsh. We deem that these words might be appropriate if infamous or heinous crimes had been committed. As we have read and re-read the record—read and re-read the opinion—we are unable to see the justification for such severity and harshness.

When the court speaks of "Moral myopia" and "attacks from traitors" (R. P 177, 209, 218) it merely indicates, to us at least, that there was prejudice prior to *"weighing the evidence"*.

We quote:

> "The Court (Fee, J.): . . . . . I just want to make plain my personal attitude. I will personally never hear another matter in which Mr. Patterson appears, because I am prejudiced against him, I am prejudiced on this record." (R P 199, 200). * * * because the matters of record are so preju-

> dicial to Patterson that the writer would be unable to have confidence in any representations or contentions made by him (R. P 217).

The question is raised that did not thereby the judge disqualify himself from proceeding further after he had become convinced that he was prejudiced against Patterson, and is not therefore the judgment void? We are convinced that the penalty imposed could not have been entered in "judicial calm".

It is unfortunate that because of the confidence placed in him by his superiors that it became his duty to handle many cases which were strenuously contested. He appeared in 90% of all the OPA civil litigation and in all of their criminal cases. It was necessary to seek reversals of the court's ruling in certain instances. *U. S. vs. Sagner,* et al, 71 F. supp 52, Reversed 331 U. S. 791, 67 S. Ct. 1522, 91 L. Ed. .....*U. S. vs. Oregon City Woolen Mills* 162 F. (2d) 721.

He was attorney for the United States in a case brought against a device known as Specto-Chrome which resulted in an appeal to this court. *U. S. vs. Olson,* 161 F (2d) 669.

He represented the Government in a proceeding brought pursuant to *Rule 20* of the *Federal Rule of Criminal Procedure,* 18 U. S. C. A. foll. Sect. 687. The District Court refused to recognize this rule *U. S. vs. Schwindt* 74 F. Supp. 618, *U. S. vs. Bink 74* F. Supp.

603. Handling of these cases by the appellant clearly indicate the confidence placed in Patterson by his superiors.

It is not contended, nor does the appellant himself, contend that all of his acts were done with the best of judgment. It is strenuously contended, however that at no time did he act with guilty knowledge or with corrupt motive. It cannot be pointed out in a single instance, where the appellant sought to deceive anyone or that anyone was misled or damaged by his actions. Had he consulted with older and more experienced lawyers, possibly, the acts complained of would never have occurred. While it is realized that cases such as these must ultimately depend on the individual facts of each case, nevertheless in our experience, an attorney has never been disbarred and deprived of his livelihood merely because of a mistake of judgment. If this is to be the standard that all must adhere to, then few of us can feel secure.

An apt quotation from the case of *People vs. Lotterman,* 353 Ill. 399, 187 N.E. 424, 428, is deemed appropriate.

> "It is the duty of the court to protect the public against the wrongful acts of unscrupulous and dishonest lawyers. However, the court also has a duty to its attorneys, who, though they have made a mistake in their professional conduct, have not done so through any base, sordid or dishonest motives."

Measuring the conduct of the appellant by the standards which were referred to at the beginning of this brief, we submit;

J. Robert Patterson is not guilty of misconduct so as to be unworthy of the trust and confidence involved in his official oath, nor is he to be found wanting in integrity, moral character or personal honesty.

The evidence is not conflicting but overwhelming to the effect that he acted throughout in the utmost good faith and without any intent to cheat, harm or defraud.

Not one of the acts complained of have resulted in harm of the slightest nature to anyone.

A mistake of judgment in certain instances, *perhaps,* but not such a mistake as would shock the conscience of the court, his fellow lawyers or the public.

It is contended that a careful analysis of all the evidence leads to only one conclusion: that the appellant did not, either in heart or mind, act with bad faith or with corrupt motives and that the findings and judgment of disbarment are not supported by the evidence and should therefore be reversed.

Respectfully submitted,

B. A. Green,
Mason Dillard,
Attorneys for Appellant.

APPENDIX

RULE I

ADMISSION TO THE BAR (UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON)

Whenever as a result of proceedings had in the Supreme Court of the State of Oregon any attorney of this court is suspended or disbarred from practice as an attorney before the Supreme Court or other courts of the State of Oregon, the Standing Committee on Discipline to the Bar of this court shall investigate the charges against such attorney, who shall within thirty days after the order is entered by the Supreme Court of the State of Oregon, show cause to said committee why he should not be suspended or disbarred from practice in this court. Said committee, with or without cause shown by said attorney, shall make its report to this court with its recommendation of the action to be taken by this Court.